Testimony of Eric W. Gjede
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Before the Judiciary Committee
March 23, 2016

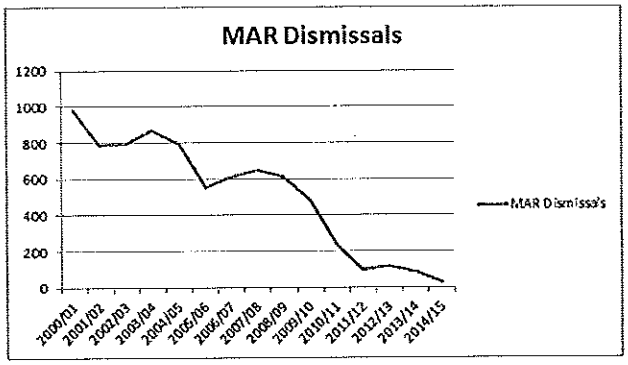
Testifying in support (in part and with modifications) of SB 468
AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Good afternoon Senator Coleman, Representative Tong, Senator Kissel, Representative Rebimbas and members of the Judiciary Committee. My name is Eric Gjede and I am assistant counsel at the Connecticut Business and Industry Association (CBIA), which represents more than 10,000 large and small companies throughout the state of Connecticut.

CBIA supports sections 4 to 7 of SB 468. We oppose sections 1 to 3. This testimony will focus on sections 5, 6 and 7 of the bill.

The business community is deeply concerned about shifts in the treatment of discrimination claims at the Commission on Human Rights and Opportunities. While CHRO has historically been plagued with a backlog of cases, the commission has chosen to deal with the problem by changing their case review standards without legislative approval, and then more recently, using the legislature to mandate that parties to a claim engage in time-consuming and costly mediations at the onset of the claim. It is our belief that in many instances, the commission has reduced their caseload not through quicker and more equitable outcomes, but rather through making the process so onerous that respondents are forced to settle meritless claims.

Fiscal Year—June to June	Number of MAR Dismissals for No Possible Reasonable Cause Finding	Total Case Closures	Percentage (rounded)
2000-2001	975	2193	44%
2001-2002	785	2159	36%
2002-2003	794	2215	36%
2003-2004	866	2368	37%
2004-2005	795	2258	35%
2005-2006	553	2167	26%
2006-2007	610	2168	28%
2007-2008	651	2397	27%
2008-2009	610	2118	29%
2009-2010	483	1761	27%
2010-2011	237	1299	18%
2011-2012	96	1625	6%
2012-2013	116	2121	5%
2013-2014	85	2327	4%
2014-2015	31	2334	1%



In 1994, the legislature added a "Merit Assessment Review" standard to the CHRO claim process. At that time, the backlog of cases at CHRO was significant. The Merit Assessment Review standard allowed for the expeditious dismissal of frivolous cases, provided such a complaint "(1) failed to state a claim for relief or is frivolous on its face, (2) the respondent is exempt from the provisions of the chapter, or (3) there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause."

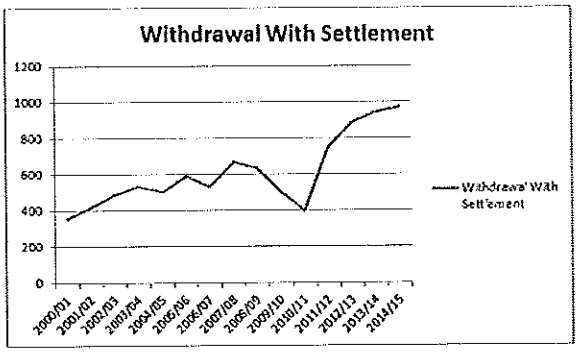
Public Act 11-237 made various changes to the CHRO process. The purpose of the act was to expedite the processing of cases by focusing on mediation and early legal intervention. CHRO noted that they had, years prior, shifted away from dismissing cases under the case/merit assessment review standards and now focused

on mediation. However, there was no legislative approval for this change in standards. This shift resulted in many frivolous cases being retained that normally would have been dismissed on initial review.

In October 2015, the CHRO proposed, and the legislature agreed, to change the name from "Merit Assessment Review" to "Case Assessment Review." According to CHRO, this was done to eliminate the misperception that passing through this initial phase is an indication of the strength of the case. Indeed, the CHRO had for years ceased conducting any "Merit" review as originally intended when the Merit Assessment Review standard was adopted in 1994. In fact, at this point in time, despite no change in their statutory review standard, only 1% of cases were being dismissed under the merit assessment review process, down from 44% in 2000. Thus, employers have virtually no chance of getting a case expeditiously dismissed under the "Merit" now "Case" Assessment Review process regardless of the frivolity of the claim.

Fiscal Year—June to June	Total Case Closures	Cases Withdrawn With Settlement	Percentage of cases settled
2000-2001	2193	350	16%
2001-2002	2159	412	19%
2002-2003	2215	491	22%
2003-2004	2358	529	22%
2004-2005	2258	501	22%
2005-2006	2167	587	27%
2006-2007	2168	531	24%
2007-2008	2397	669	28%
2008-2009	2118	630	30%
2009-2010	1761	503	29%
2010-2011	1299	397	31%
2011-2012	1625	746	46%
2012-2013	2121	881	42%
2013-2014	2327	941	40%
2014-2015	2334	969	41%

While CHRO had long ago shifted towards mediating cases, this became a mandatory part of the onset of the process in 2015. Although there is nothing to indicate that cases with CHRO have become more meritorious, the number of employers paying to settle cases has risen dramatically. While certainly there are many instances where this outcome is warranted, there are also a significant number of cases where businesses are settling claims simply to avoid the costly and time consuming expense of fact-finding conferences. This is not good public policy.



In lieu of the standard set forth in lines 203 to 209 of the bill, we suggest the modified language attached to this testimony. Several substantive changes were made to the language we initially suggested. The attached proposed language is the same standard used by the federal Equal Employment Opportunity Commission. Further, this standard protects claimants by specifically stating that a dismissal of a claim by the CHRO does not mean that the respondent is in compliance with the statute.

SB 468 also makes the initial mediation conference voluntary. These mediation conferences are an unnecessary expense of time and money when the respondent has no intention of settling a meritless claim.

SB 468 limits the length of time for fact finding conferences and allows the respondent to be present while the complainant is questioned. Witnesses are forced to make accommodations to be present for the entirety of a day during fact-finding conferences. It is an unreasonable burden to force them to appear for an additional day in person if the fact-finding conference exceeds that time period. Additionally, when the respondent is present, they should have the right to be present to hear the accusations against them in order to refute aspects of the

complainant's testimony with their counsel. Finally, SB 468 allows the complainant or respondent to request a release of jurisdiction if there is a pending civil action or arbitration between the parties.

For these reasons, we support sections 4 to 7 of SB 468.

Proposed Modifications to Lines 204 to 206:

In line 204, strike "determine whether" and insert "conclude" in lieu thereof

In line 205 and 206, strike "sets forth" and insert "establishes" in lieu thereof